

WASHINGTON STATE DEPARTMENT OF TRANSPORTATION

Software Warranty Contract

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# WASHINGTON STATE DEPARTMENT OF TRANSPORTATION

## SOFTWARE WARRANTY CONTRACT AGREEMENT NO. DP-\_\_\_\_\_

THIS CONTRACT is made by and between the State of Washington acting through the Washington State Department of Transportation, Transportation Building, Mail Stop KF-01, Olympia, Washington 98504, hereafter referred to as the "WSDOT" and \_\_\_\_\_ (*name and address of company*) \_\_\_\_\_ a \_\_\_\_\_ (*state*) \_\_\_\_\_ corporation hereinafter referred to as the "Vendor".

### 1. Definitions

- A. Customer** shall mean the Washington State Department of Transportation (WSDOT).
- B. Covered Software** shall mean \_\_\_\_\_ (*name of product*) \_\_\_\_\_.
- C. Official Release** shall mean versions of the Covered Software that have been certified and are offered for sale as upgrades to the Covered Software by Vendor.
- D. Designated Support Site** shall mean the Customer facility that will be the primary contact with Vendor. For purposes of this contract, the designated support site will be the Washington State Department of Transportation, Transportation Building, Mail Stop KF-01, Olympia, WA, 98504.
- E. Primary Contact** shall mean the person in WSDOT who shall service as the principle point of contact for the Vendor. For purposes of this contract the primary contact will be \_\_\_\_\_ (*name of person*) \_\_\_\_\_, Phone: (206) \_\_\_\_\_ (*number*) \_\_\_\_\_.

### 2. Warranty Period

This contract will be effective, and the warranty services will be provided starting \_\_\_\_\_ (*date*) \_\_\_\_\_. The expiration date for the warranty period will be \_\_\_\_\_ (*date*) \_\_\_\_\_.

### 3. Option To Extend

At least 60 days prior to the stated termination date, Vendor will submit to Customer an offer to provide similar coverage for an additional one year term. The contract will terminate unless the Vendor and Customer agree on an extension prior to the termination date.

### 4. Warranty Fee

The fee for the term of this contract will be \_\_\_\_\_ (*dollar amount*) \_\_\_\_\_.

### 5. Payment Terms

The warranty fee shall become due and payable 30 days after the start of the warranty period. Payment shall be considered timely if made by the WSDOT within 30 days after receipt of properly completed invoices. All amounts unpaid after thirty (30) days shall bear an interest rate of one (1) percent per month. Payment shall be sent to the address designated by the Vendor.

Payment shall be made upon submittal of three copies of properly completed invoices. Invoices must include the contract number. All invoices must be mailed to: Department of Transportation, MIS Accounting, Transportation Building, KF-01, Olympia, Washington 98504.

## **6. Warranty Services**

The Vendor agrees to provide the warranty services as described in Exhibit A, *Warranty Services*.

## **7. Confidentiality**

The Vendor agrees to hold all confidential information in strictest confidence and not to make any use thereof other than for the performance of this contract.

## **8. Indemnification**

The Vendor shall defend, protect, indemnify and hold harmless the WSDOT, or any of its employees, officers and or agents thereof, from and against all claims, suits or actions of whatsoever kind or nature arising from the other parties acts and/or omissions which are libelous or slanderous, results in injury to persons or property, violate a right of confidentiality, or use or reproduce materials of any kind which constitutes an infringement of any copyright, patent, trademark or tradename.

## **9. Termination**

This contract shall terminate at the end of the initial term unless a new contract between Customer and Vendor is signed into effect for similar service.

This contract may be terminated for any material breach by Vendor of the terms and conditions of this contract. In such event, the Vendor shall be liable for damages as authorized by law.

## **10. Nonassignment**

Neither this contract, nor any claim arising under this contract, shall be transferred or assigned by the Vendor.

## **11. Vendor Commitments, Warranties and Representations**

A. Any written commitment by the Vendor within the scope of this contract shall be binding upon the Vendor. Failure of the Vendor to fulfill such a commitment may constitute breach and shall render the Vendor liable for damages due WSDOT under the terms of this contract.

B. For purposes of this contract, a commitment by the Vendor, which must be in writing, includes: (1) prices and options committed to remain in force over a specified period(s) of time; (2) any warranty or representation made by the

1 Vendor as to software performance or any other physical, design or functional  
2 characteristics of the software; (3) any warranty or representation made by the  
3 Vendor concerning the characteristics or items in (2) above, contained in any  
4 literature, descriptions, drawings or specifications accompanying or referred to in  
5 a proposal; (4) any representation by the Vendor in writing, supporting  
6 documents or negotiations subsequent thereto as to training to be provided,  
7 services to be performed, prices and options committed to remain in force over a  
8 fixed period of time or any other similar matter regardless of the fact that the  
9 duration of such commitment may exceed the duration of this agreement.

## 10 11 **12. Taxes**

12  
13 WSDOT agrees to pay all State of Washington sales or use tax. No charge by Vendor  
14 shall be made for excise taxes, personal property, or other similar taxes. WSDOT  
15 agrees to furnish Vendor with an exemption certificate if applicable.

## 16 17 **13. Notices**

18  
19 All notices hereunder shall be given in writing to addresses defined in this contract, or to  
20 such addresses as either party may hereinafter designate to the other by notice in  
21 accordance herewith.

## 22 23 **14. Entire Agreement**

24  
25 This contract constitutes the entire agreement of the parties hereto with respect to the  
26 subject matter hereof. The headings of the contract are for convenience only and not  
27 part of the contract and shall not affect the interpretation thereof. Any amendments to  
28 this contract must be in writing and be signed by the parties hereto.  
29

1   15.   **Venue**

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This contract shall be construed and interpreted in accordance with the laws of the state of Washington. The Vendor agrees that the venue of any action or suit concerning this contract shall be Thurston County Superior Court and all actions or suits thereon shall be brought therein. The Vendor agrees to accept service of process within the state of Washington at any office maintained therein. If such offices are not maintained, the Vendor designates the Secretary of State as an agent for the purpose of service of process.

IN WITNESS WHEREOF, the State and the Vendor have signed this agreement.

\_\_\_\_\_  
CONTRACTING OFFICER FOR THE  
WASHINGTON STATE  
DEPARTMENT OF TRANSPORTATION  
\_\_\_\_ DAY OF \_\_\_\_\_, 1993

\_\_\_\_\_  
CONTRACTING OFFICER FOR  
\_\_\_\_\_*(name of company)*\_\_\_\_\_  
\_\_\_\_ DAY OF \_\_\_\_\_, 1993

**This contract has been approved as to form by the Office of the Attorney General.**

**EXHIBIT A**  
**Warranty Services**

A. Vendor Responsibilities

1. Vendor will supply Customer with Official Releases of the Covered Software. Vendor will ship one copy of the software and associated documentation to Customer for each license covered under this contract. Shipment will be made to the designated support site.
2. Vendor will provide telephone consultation to personnel at Customer's designated support site during \_\_\_\_\_(What?)\_\_\_\_\_ hours.
3. Vendor will correct any programming or physical defects in the software. Vendor will provide such corrections within \_\_\_\_\_(*How Many?*)\_\_\_\_\_ days by delivering to WSDOT an updated version of the software that corrects the error. Vendor will send one copy of the corrected software to the Customer's designated support site.

B. Customer Responsibilities

Customer shall submit written notice to Vendor of changes of designated support site including change of address, telephone number, and primary contact.